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Multimedia Games, Inc.
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EXAMINER

COBURN, CORBETT B

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CLIFTON LIND, GORDON T. GRAVES, GARY L. LOEBIG,
JEFFERSON C. LIND, JOSEPH R. ENZMINGER,
RODNEY L. WILLYARD, and ROBERT LANNERT

Appeal 2017-000129¹
Application 14/016,172²
Technology Center 3700

Before ANTON W. FETTING, KENNETH G. SCHOPFER, and
TARA L. HUTCHINGS, *Administrative Patent Judges*.

SCHOPFER, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellants request rehearing of the decision entered November 15, 2017 (“Decision”), which affirmed the Examiner’s rejection of claims 1–16 as directed to ineligible subject matter under 35 U.S.C. § 101. Appellants contend that we misapprehended or overlooked several points of law or fact related to our analysis under *Alice Corp. Pty. Ltd. v. CLS Bank International*,

¹ Our decision references the Request for Rehearing (“Req. Reh’g,” filed Jan. 11, 2018), Appeal Brief (“Br.,” filed June 8, 2015), the Examiner’s Answer (“Ans.,” mailed Oct. 5, 2015), and the Final Office Action (“Final Act.,” mailed Dec. 8, 2014).

² According to Appellants, the real party in interest is Multimedia Games, Inc. Br. 3.

134 S. Ct. 2347 (2014). Req. Reh’g 2. We find no point of law or fact that we overlooked or misapprehended in arriving at our Decision.

DISCUSSION

Appellants raise several issues related to our application of the two-step *Alice* framework in the Decision. We address each in turn below.

First, Appellants assert that we have described the claims at too high a level of abstraction that is inconsistent with the *Alice* framework. Req. Reh’g 3. Specifically, Appellants argue that “the claims are not directed to managing a bingo game at all and are not directed to simply displaying bingo game results.” *Id.* Appellants indicate that the Decision overlooks “the different types of results specified in the claims, namely, the game ending result... and additional results including a ‘first winning result.’” *Id.* (citing claim 1). Appellants allege that there “is nothing abstract about the way the present claims require identifying different types of bingo results and then displaying the different types of results at different electronic player stations” in a spinning reel-type graphical presentation or a playing card graphical representation. *Id.* at 3–4.

Appellants’ argument does not persuade us that we overlooked any point of law or fact in arriving at our Decision. As an initial matter, we find Appellants’ argument here untimely. Our Decision relied on the Examiner’s findings and analysis regarding the *Alice* framework, including the Examiner’s finding that the claims are directed to conducting a bingo game and displaying a bingo game results. *See* Final Act. 2; Ans. 3. Appellants could and should have raised these arguments in response to the Examiner’s findings and conclusion. *See* 37 C.F.R. § 41.52(a)(1). Further, under part one of the *Alice* framework, we “look at the ‘focus of the claimed advance

over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)). Under step-one, we agree with the Examiner’s conclusion that claim 1, as whole, is directed to managing a bingo game and displaying results, which we find to be an abstract idea.

Next, Appellants argue that they do not apply preemption as a standalone test for patent eligibility, but rather in the context of the *Alice* framework, and that “it is difficult to see how the **complete** lack of preemption . . . is not determinative of the analysis”. Req. Reh’g. 5–6. Appellants’ arguments here do not persuade that we overlooked any point of law or fact in arriving at our Decision. We also find these arguments untimely. In particular, our response to Appellants’ argument regarding preemption is consistent with the Examiner’s response thereto, and thus, the arguments could and should have been raised in a timely filed Reply Brief. *See* Ans. 8; Decision 5. Furthermore, our Decision does not indicate that Appellants’ rely on preemption as a standalone test for eligibility. Rather, our Decision simply concludes that any preemption concerns are inherently addressed by the Examiner’s *Alice* analysis. *Id.*

Appellants also present arguments “pursuant to 37 C.F.R. § 41.52(a)(2) in view of recent court precedent regarding step two of the” *Alice* framework. Req. Reh’g 6. Under step two, Appellants argue that the inventive concept of the present claims that warrants patent eligibility is the combination of identifying the game ending result to determine the designations (bingo draw) to be used to identify other results, combined with displaying these different types of bingo results via the non- bingo game presentations at

different electronic player stations, spinning reel game presentations (independent claims 1 and 12) and playing card game presentations (independent claims 6 and 12).

Id. at 8. Further, Appellants liken the claims here to those addressed in *BASCOM Glob. Internet Servs. v. AT&T Mobility, LLC*, 827 F.3d 1341 (Fed. Cir. 2016) because “the inventive concept lies in the non-conventional and non-generic arrangement of known conventional pieces” including the “inventive solution to the technical problem of presenting bingo results in a more interesting fashion... while maintaining the fundamental characteristics of the underlying bingo game.” Req. Reh’g 8.

We find this argument unpersuasive. First, regarding the alleged inventive concept quoted above, we are not persuaded that this represents anything more than the abstract idea itself. That the claim identifies different results and displays results differently does not differentiate those steps identified by the Appellants from the abstract concept identified, i.e. they amount to no more than managing a bingo game and displaying its results. Second, we are not persuaded that the claims here are similar to the claims found eligible in *BASCOM*. The claims in *BASCOM* were found eligible because they were directed to “a technology-based solution (not an abstract-idea-based solution implemented with generic technical components in a conventional way) to filter content on the Internet that overcomes existing problems with other Internet filtering systems.” *BASCOM*, 827 F.3d at 1351. Thus, the claims were found eligible for reasons similar to those set forth in *DDR Holdings* in which the Federal Circuit found the claims “necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014).

Here, Appellants do not persuade us that the claims are necessarily rooted in computer technology or present a technical solution to a technical problem. In particular, we find that the problem of “presenting bingo results in a more interesting fashion” is not a problem rooted in any particular technology. *See* Req. Reh’g 8. Furthermore, it is not clear to us how the claims reflect or require the use of a “non-conventional or non-generic arrangement of known conventional pieces.” Although the ultimate result of displaying bingo results via a spinning reel or card game may be unconventional, Appellants do not point to any technology that is used in a non-conventional manner.

Finally, we are not persuaded that we overlooked or misapprehended any point of law or fact related to Appellants’ argument that the claims may not be performed mentally or with only conventional computer technology. On this point, we find Appellants’ arguments untimely as they address the Examiner’s findings presented in the Answer, for which Appellants’ provided no reply. *See* Ans. 3–6. Thus, Appellants arguments could and should have been presented previously. *See* 37 C.F.R. § 41.52(a)(1).

CONCLUSION

We have carefully reviewed the original Decision in light of Appellants’ request, but we find no point of law or fact that we overlooked or misapprehended in arriving at our decision. Therefore, Appellants’ request for rehearing is denied.

DENIED